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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

22 July, 1991

**ORIGINAL
FILE**

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of)
Amendment of Section 97.113(a) ,97.115(a))
& 97.117 of Rules and Regulations,)
governing the Encroachment of)
Business and Commercial Interests)
on the Amateur Frequencies)

JUL 25 1991

FCC MAIL BRANCH

PR Docket No.
92-136

The Federal Communications Commissions Private Radio Bureau and the Field Operations Bureau, have been wrestling with a so called "dispute" on the amateur frequencies, for over three years, trying to find a solution. A letter from Mr. McNamara, Chief of the Special Services Division, was recently issued, stating that the "dispute" was no longer a significant problem. However, it is still an on going problem to amateurs.

This dispute concerns the Encroachment of business and commercial entities, who use phone patches to deliver illegal business and commercial third party traffic, on the amateur frequencies. It also concerns the exploitation by various individuals and groups, using the Amateur Radio Service, as an alternative to the Maritime, and Common Carrier radio services.

The "dispute" is about the interpretation and non enforcement of the Commission's Rules, 47 C.F.R. 97.113, PROHIBITED TRANSMISSIONS, 97.115 THIRD PARTY ARRANGEMENTS and 97.117 TYPES OF MESSAGES.

Section 97.113 of the Commission's Rules, 47 C.F.R. 97.113(a), prohibits an amateur station licensed by the FCC from transmitting any communications the purpose of which is to facilitate the business or commercial affairs of any party, and from transmitting any communications as an alternative to the broadcast, common carrier, maritime, land mobile, or any other authorized radio service. All types of communications related to business activities, including the advertising, soliciting, ordering, furnishing, delivering, accounting, or billing for any supplies, materials, or services, is prohibited.

The Commission has, on numerous occasions, provided guidance to amateur stations conducting third party communications. In the Report and Order in PR Docket No. 88-139, for instance, the Commission concurred with the ARRL's observation concerning the proper balance in the rules between the flexibility to achieve the objectives of the amateur service and the degree of protection necessary to prevent exploitation of the service. The amateur service should be allowed to utilize its allocated frequencies unfettered by encroachment from commercial entities. It should not be allowed to be exploited by those who would use them as an alternative to the land mobile, broadcast, maritime or common carrier radio services.

In the order adopted June 29, 1983, the Commission stated that the term "business" in this instance, is used in its broadest context. It includes all types of communications which are intended to facilitate the regular business or commercial affairs of any party, whether individual or organization, whether for-profit or not-for-profit, whether charitable or commercial, and whether government or non-government.

Section 97.115 of the Commission's Rules, 47 C.F.R. 97.115(a)(2) authorizes an amateur station licensed by the FCC to transmit messages for a third party to any amateur station within the jurisdiction of a foreign government whose administration has made arrangements with the United States to allow amateur stations to be used for transmitting international communications on behalf of third parties. (I will not list the countries that are contained in the rule, as it changes and is rather a lengthy list)

No amateur station regulated by the FCC shall transmit messages for a third party to any station within the jurisdiction of any foreign government not listed above. This prohibition does not apply to a message for any third party, who is eligible to be the control operator of the station.

Section 97.117 of the Commission's Rules, 47 C.F.R. 97.117, stipulates that amateur station transmissions to a different country, where permitted, shall be in plain language and shall be limited to messages of a technical nature relating to tests, and to remarks of a personal character for which, by reason of their unimportance, recourse to the public telecommunications service is not justified.

The "dispute" is still going on. However, what is not going on is the enforcement of the above Rules.

It has been clearly shown by the Commission that they do not want to make more restrictive rules for the Amateur Radio Service. The amateur community would not like to see more restrictive rules either. However, it is believed that in this case either more restrictive rules are indicated or enforcement of the existing rules must be accomplished. The "Peer Pressure" method of bringing amateurs to comply with the rules, has been so undermined by lack of enforcement, that it no longer has meaning.

It is quite obvious to the amateur community, that the "dispute" is not the problem. It is the blatant disregard for the rules and regulations, by mostly american amateurs, world wide, in an attempt to bring business and commercial type traffic to the Amateur Frequencies.

The reason for this happening is also very obvious. The cheap, low cost, amateur communications, makes it ideal for business and commercial transactions. It is especially low cost for those who are living in a foreign country. Requests for phone patches often have a stipulation that it be a toll free phone patch.

Recreational boaters, find it an ideal way to save money and to keep tabs on what is happening with their business or business's. Missionarys, who are usually on a very limited budget, also find this an ideal method of filing status reports, and for ordering supplies, be it bibles or vehicle parts.

The Maritime Radio Service has been set up for the use of those who ply the sea, be it for profit or for recreation. They have set up expensive stations to serve the need of the seafarers. The cost of this service is very high, and in the eyes of most of those who would use them, is too costly to use for daily information. They are therefore, encroaching on the amateur frequencies, which costs them nothing or next to nothing.

It has been stated that the amount of illegal phone patches has been reduced to less than 3 or 4 percent by the ARRL, therefore it is not a significant problem. Lets face it, thats like saying, "someone is a little bit pregnant." Those figures have also been challanged as being too low.

When this was first brought to the Commission's attention, back in April 1989, this illegal traffic was running about 40 percent. Mr. McNamara in a letter dated: Oct. 11, 1989 stated most succinctly after he reviewed 97.113(a), 97.115(a), and 97.117 and other 47 C.F.R. rules and regulations that:

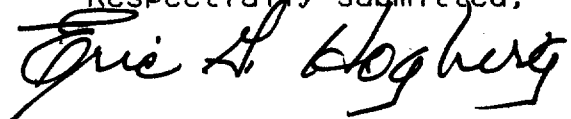
"Considering the above limitations, it is not apparent why there should be any significant amount of third party communications transmitted in the amateur service." "It appears however, that as much 15 percent of the 20 meter band is being claimed for such communications by some amateur operators and by organizations apparently organized specifically to utilize the amateur service for third party telephone communications." As late as last month my personal count was as much as seven percent of the many phone patches were illegal. That ladies and gentlemen is not a doctored figure. Even if it had been 1 percent it would still be one out of a hundred that is breaking a rule that I can only assume is unenforceable by the FCC facilities.

The use of other amateur modes for business and commercial type transactions, has been a growing problem. It was brought to the attention of the FCC that "Packet" was being used, as far back as 1989, for illegal traffic. The FCC is aware of this, as is evidenced by the recent Notices of apparent Liability sent to several stations. In the growing digital communications modes, this will present future problems unless it is addressed now.

Therefore, I request that the Commission:

- A. Issue enforceable rules that will stop the exploitation of the Amateur Radio Service, by business and commercial entities, using them as an alternative to other Radio Services
- B. Issue enforceable rules that will stop the encroachment of commercial endeavors and entities, who would use allocated Amateur Radio Service frequencies for business and commercial traffic.
- C. If present rules are enforceable, then rapid and severe punishment, for violators of the existing rules, must be carried out.

Respectfully submitted,

A handwritten signature in black ink, reading "Eric G. Hogberg". The signature is written in a cursive style with a large, stylized "E" and "H".

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